

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEFFREY FLEISCHER,

Plaintiff,

v.

ACCESSLEX INSTITUTE d/b/a ACCESS
GROUP; CONDUENT EDUCATION
SERVICES, LLC f/k/a ACS EDUCATION
SERVICES; MASSACHUSETTS HIGHER
EDUCATION ASSISTANCE
CORPORATION d/b/a AMERICAN
STUDENT ASSISTANCE; DELTA
MANAGEMENT ASSOCIATES, INC.;
F.H. CANN & ASSOCIATES, INC.,

Defendants.

Case No. 17-cv-08295

Judge: Manish S. Shah

Magistrate Judge: Jeffrey Cole

**DEFENDANT DELTA MANAGEMENT ASSOCIATES, INC.'S RENEWED
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant, DELTA MANAGEMENT ASSOCIATES, INC. (“Delta”), by its attorneys David M. Schultz and Brittney N. Cato, and pursuant to Federal Rule of Civil Procedure 12(c), respectfully requests that this court grant it a judgment on the pleadings and dismiss Plaintiff Jeffrey Fleischer’s (“Plaintiff”) First Amended Complaint (“Amended Complaint”), with prejudice. In support thereof, Delta respectfully incorporates the arguments set forth in its February 15, 2018, Motion for Judgment on the Pleadings (“MJP”) (Dkt. #37) and states as follows:

As an initial matter, Plaintiff’s Amended Complaint alleges the exact same claims against Delta as Plaintiff’s Complaint, save for alleged fraudulent concealment. *See* Dkt. #1, PageID #19-34; Dkt. #59, PageID #867-884. While Plaintiff’s Amended Complaint attempts to make

Plaintiff's ICFA and FDCPA allegations more specific and tailored to the Defendants,¹ no amount of additional specificity would make Plaintiff's ICFA and FDCPA claims against Delta plausible. As set forth in detail in Delta's MJP, there can be no legitimate dispute that Plaintiff's ICFA and FDCPA claims against Delta are outside of the applicable statutes of limitations.

Just like Plaintiff's ICFA and FDCPA claims, Plaintiff fraudulent and negligent misrepresentation claims against Delta are also still not plausible, even as Plaintiff attempts to similarly tailor his allegations. Boiled down, the specific facts set forth by Plaintiff that allegedly implicate Delta have not changed. *See* Dkt. #1, PageID #7-10; Dkt. #59, PageID #9-13. As such, Plaintiff's claims are no more plausible now than they were when Delta first filed its MJP. In fact, the "misrepresentations" now specifically attributed to Delta in Plaintiff's Amended Complaint are the same "misrepresentations" that Delta identified for the Court in its MJP.

Nor does the withdrawal of Plaintiff's fraudulent concealment claim aid Plaintiff's cause. In its MJP, Delta explained how Plaintiff's fraudulent concealment claim was factually contradictory and undermined his other not-plausible claims and allegations. While Plaintiff has attempted to remove this impediment, his other claims are still based on the same factual matter alleged previously – factual matter that is insufficient to state any plausible claims for relief against Delta. For all of these reasons, and those set forth in Delta's MJP, which is respectfully incorporated herein by reference, Defendant Delta Management Associates, Inc. respectfully

¹ For example, with respect to Plaintiff's ICFA claim in Count I, Plaintiff previously alleged that Defendants, in general, failed or refused to provide a reasonable resolution to Plaintiff. *See* Dkt. #1, PageID 21-22. Now, Plaintiff specifically alleges Delta, *inter alia*, "failed or refused to provide a reasonable resolution" to Plaintiff and avoided "providing answers or a resolution" to Plaintiff. *See* Dkt. #59, PageID #870. Plaintiff attempts this narrower tailoring in a handful of other places in his Amended Complaint, not just against Delta, but against the other Defendants as well.

moves this Honorable Court for an order granting it a judgment on the pleadings and dismissing Plaintiff Jeffrey Fleischer's First Amended Complaint, with prejudice.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

/s/ Brittney N. Cato

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CERTIFICATE OF SERVICE

I, Brittney N. Cato, an attorney, certify that on April 18, 2018, I shall cause to be served a copy of **DEFENDANT DELTA MANAGEMENT ASSOCIATES, INC.'S RENEWED MOTION FOR JUDGMENT ON THE PLEADINGS**, upon the below named individual(s) by: depositing same in the U.S. Mail box at 222 North LaSalle Street, Chicago, Illinois 60601, prior to 5:00 p.m., postage prepaid; messenger delivery; UPS; facsimile transmitted from (312) 704-3001; email; and/or electronically via the Case Management/Electronic Case Filing system ("ECF"), as indicated below.

- ☒ ECF
- ☐ Facsimile
- ☐ UPS
- ☐ U.S. Mail
- ☐ E-Mail
- ☐ Messenger Delivery

To: All Parties of Record

/s/ Brittney N. Cato
Brittney N. Cato